IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1984 OF 1984

The State Trading Corporation of India Ltd. .. Plaintiffs

Versus

Hardcastle & Waud Manufacturing Company Ltd. .. Defendants

Mr.K.H.Mody i/b Little & Co. for plaintiffs

Mr.Niranjan Lapshiya for defendants

CORAM : P.V.KAKADE, J.

DATE : 29TH OCTOBER, 2004.

P.C.:

1. The plaintiffs Corporation filed the suit against the defendant for recovery of sum of Rs.1,62,392/= with interest towards difference in the so called provisional and final prices of suit goods after a period of one

year and one month.

2. The plaintiff is a canalising agency for the import and distribution of imported ‘Sodium Cyanide Granules’ as per the Import Policy of Government of India. The defendants is a Public Limited Company, in whose favour, the State Chemical and Pharmaceutical Corporation Limited (thereinafter called as S.C.P.C.) had allotted, on or about 24th April 1981, a quantity of 95 Metric Tonnes of Sodium Cyanide Granules subject to the terms and conditions mentioned in the Allocation Letter dated 24th April 1981 which is marked as Exhibit-P-3. The said Allocation Letter contained a clause "payment particulars" under which "sale price (provisional)" was mentioned as Rs.12,836/= per Metric Tonne. The sale was on High Sea Sale Basis. On 8th May 1981, the Vessel carrying the goods arrived in Bombay and the Defendant cleared the goods on 20.5.1981. The Plaintiff collected from the defendant the record of Import Documents. The S.C.P.C. had sent to the defendant its invoice dated 30th June, 1981 bearing No.00226/81-82 for the sum of Rs.12,16,852.80 which was based on the provisional rate of Rs.12,836/=. On or about August 1981 the defendant paid to S.C.P.C. a sum of Rs.12,22,555/=. The

Plaintiff after taking into account all relevant factors fixed the final price of the said material at Rs.14,549/= per metric tonne and accordingly informed the defendant by its letter dated 15th June, 19082 which is marked as Exhibit-P-5. Inspite of several reminders and meetings with the defendant, the defendant failed and neglected to make payment of the difference price to the plaintiff. In the letter dated 17th August 1983 the Plaintiff had set out the various reasons for the intimating the final price to the defendant. The said letter dated 17th August 1983 is marked as Exhibit-P-10. It is the case of the plaintiff that the defendant was at all material times aware and had full knowledge of the fact that it was plaintiff’s normal practice to allow the parties to clear the goods on payment of the price fixed on provisional basis, subject to final price being fixed.

3. The defendant admits the fact that on or about 24th April 1981 the defendant arrived Allocation Letter for 95 Metric Tones of Sodium Cyanide Graules from S.C.P.C. However, the defendant denies that the price mentioned in the said Allocation Letter dated 24th April 1981 was a provisional price and not the final price. The

defendant denies accepting the terms and conditions mentioned in the said Allocation Letter as the same were unreasonable and unconscionable. the sale of the goods was effected on High Sea Sales basis and the goods were delivered to the Defendant before 20th May 1981. The actual supply to this Defendant 2as 94.8 Metric tonnes. A final invoice No.226/81-82 dated 30th June 1981 was issued by the plaintiff for Rs.12,16,852.80 as the final price payable by the defendant. The said invoice does not mention that the price is provisional as alleged by the plaintiff. The defendant has paid a sum of Rs.12,22,555/= being the price of the said goods, on or about 18th August 1981 and thus the Plaintiff has been over paid by Rs.5,702.20. The defendant by its letter dated 5th May 1982 addressed to the plaintiff pointed out that the plaintiff has been over paid and demanded the excess sum back. the said letter dated 5th May 1982 is annexed as Exhibit-"1" to the Written Statement of the Defendant. However, the plaintiff by its letter dated 15th June 1982 stated that the final price of the consignment sold to the defendant had been fixed at Rs.14,549/= per metric tonne as against the provisional price of Rs.12,836/= per metric tonne paid by the defendant while collecting the shipping documents. The

plaintiff also issued a Debit Note purported to be dated 31st March 1982 bearing No.25200 for the sum of Rs.1,62,392.40 being the difference between the alleged provisional price and the so called final price. The Debit Note is marked as Exhibit-P-6. The defendant time and again has pointed out the fact to the plaintiff that the payment made by it was in full and final settlement of all outstandings and that there was no question of the Defendant paying any difference in alleged provisional price and the so called final price and/or any interest thereon. However, the plaintiff merely gave its reasons for the increase in the price and the delay in intimating the alleged final price to this Defendant. The defendant states that the price cannot be revised by the plaintiff after the contract is concluded by the delivery of the goods and full price is paid for those goods by the defendant. The words "revision at any time" in para 2(1) of the Allotment Letter must be construed reasonably as the Plaintiff has purported to revise the price after over a period of one year after the payment and delivery of the goods which cannot be termed as reasonable.

4. On the basis of these pleadings the issues were

settled. The issues and my findings thereon are as follows:

ISSUES	FINDINGS
1. Whether it is the normal practice of the plaintiffs to initially fix price of the goods allocated to the parties on a provisional basis and to allow the parties to clear the goods on payment of such provisional price and final price is fixed only thereafter after taking into account inter alia the Bank advices regarding payment made to foreign supply and the rate of exchange and after relevant factors?	In the affirmative
2. Whether the defendants were aware of the practice of the plaintiffs mentioned in Issue No.1 and had acted upon the same earlier to the suit transaction ?	In the affirmative

3. Whether the Plaintiffs are entitled to recover from the defendants a sum of Rs.1,62,392.40 with interest towards difference in provisional and final price?	In the affirmative
4. Whether the suit is barred by law of limitation ?	In the negative.
5. Whether the terms set out in clause 2(a) of the Allotment Letter is not binding on the defendants for the reasons set out in para 4 of the written statement?	In the negative (terms/binding)
6. What reliefs the plaintiffs are entitled for?	As per final order below.

5. At the outset it may be noted that the Plaintiff relied upon documentary as well as oral evidence of his

witness whereas the defendants did not examined any witness but produced certain documents, which are more or less in the nature of correspondence between the parties. After having considered all relevant aspect relating to the entire evidence on record, it is found that it is an admitted position that the defendants received delivery of impugned goods on 20.5.1981. The plaintiffs issued invoice to the defendants on 30.6.1981 on the basis of provisional price. The defendants made payment to the plaintiffs as per invoice on 18.8.1981 and defendants made payment of Rs.12,22,555/= as against Invoice amount of Rs.12,16,852.80 i.e. the amount of Rs.5,702/= was paid in excess for which the credit is required to be given to the defendants.

. It is the case of the defendants that they have made amount of Rs.12,22,555/= towards full and final settlement of the outstanding dues, whereas it is the case of the plaintiffs that they issued allotment order dated 24.4.1981 Ex.P-3 to the defendants for 95 Metric Tonnes of the said goods on the terms and conditions mentioned therein. According to the plaintiffs, the material terms and conditions for the purpose of the suit were (a) the price was provisional and (b) in cases

where the price stipulated in the A.O. is provisional it is subject to revision at any time without notice. In the event of any revision in the price, even after delivery of the goods, the allottee shall be liable to pay the balance within 7 days of the receipt of intimation of revision falling which CPC reserves the right to charge interest on the unpaid balance amount at 18% per annum from the date of revision of the price till the date of full payment. The provisional price mentioned therein was Rs.12,835/= per Metric Ton, which was issued to the defendants much prior to defendants taking delivery but they never raised any dispute with regard to price being provisional any time prior to taking delivery.

6. In this regard in the course of cross-examiantion of the plaintiffs' witness the defendants tried to put their case that the word provisional in Allotment Order was cancelled by dash (-) at page 4 para 7 of the Notes of Evidence. However, the witness denied the suggestion made by stating that "it was not correct that the dash (-) in question was for the purpose of cancellation of word "provisional". It is also to be noted that no specific case was made out in the written statement

regarding cancellation of word "provisional" in the course of transaction. In fact the evidence of the plaintiffs shows that the final price was fixed after taking into account the payment made to foreign supplier, the rate of exchange at the time of payment, administrative expenses and other overheads. The plaintiffs have stated in their letter dated 17.8.1983 (Exh.P-10) that there was unusual increase in the dollar exchange rate, there was a gap of 120 days i.e. about four months between the time of contract with the foreign supplier and date of payment by Letter of Credit and therefore, the plaintiffs were required to make payment of more amount to the foreign supplier in terms of Rupees. The final price was fixed by Chief Controller of Import and Export, which is the Central Government Authority. The final price was fixed at Rs.14,549/- per Metric Tone and accordingly plaintiff by their letter dated 15th June 1982 (Ex.P.14) sent to the defendants Debit Note dated 31st March 1982 for a sum of Rs.1,62,342.40.

. In this regard it must be noted that the plaintiffs is nothing but a canalising agency for the import and distribution of the imported Sodium Cyanide

Granuals as per import policy of Government of India, therefore it is to be implied that while making foreign trade, the difference between the rate of dollar as against rupees, much varied from time to time, was required to be adjusted, as a result of which it was necessary for them to invoke the provisional rates as has been done in the present case. The defendants, who are public limited company, were definitely aware of the practice of the plaintiffs to fix provisional rates and thereafter make necessary adjustments pertaining to the period in between issuance of Allotment Letter and fixing the provisional rates and actual rates to be ceased. Under the circumstances it cannot lie in the mouth of the defendants that they were not aware of such practice and therefore, are not liable to make good the loss supplied by the plaintiffs in this transaction. Hence the issues are answered accordingly.

7. The evidence on record, in my view, is sufficient to hold that the plaintiffs have proved their case in toto. The defendants have admittedly made excess payment of Rs.5,702/= for which they are required to be given credit and taking into consideration all these aspects I hold that the plaintiffs have proved its case and hence

the order :

The suit is decreed with costs.

The defendants shall pay Rs.2,10,663/- to the plaintiffs with interest at the rate of 12% p.a. on Rs.1,56,698/= from the date of the suit till payment or realisation.

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